

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH – I**

**CP (IB) No. 4659/MB/2019**

Under section 9 of the Insolvency and Bankruptcy Code,  
2016 read with Rule 6 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority) Rules, 2016.

**Sunita Peter Arakal,**

**Sole Proprietor of Shawn Advertising**

B-202, Kailash Complex, C.H.S, Sector-4E, Near MGM  
Hospital, Kalamboli, Navi Mumbai-410218.

... Operational Creditor/Petitioner

Versus

**Nikita Jewellers Private Limited**

9, Grain Merchant Co-op, Society Limited,  
Sector-17, Vashi, Navi-Mumbai- 400703.

...Corporate Debtor/Respondent

**Order Delivered on: 05.12.2023**

***Coram:***

Hon'ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical): Mr. Prabhat Kumar

***Appearances:***

For the Operational Creditor : Mr. Aniruth Purusothaman, Advocate

For the Corporate Debtor : Mr. Ramesh Tripathi, Advocate

**ORDER**

***Per: Justice V.G. Bisht, Member(Technical)***

1. The present Company Petition is filed by **Sunita Peter Arakal, Sole Proprietor of Shawn Advertising** (hereinafter referred to as “the

**Operational Creditor”)** under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against **Nikita Jewellers Private Limited**, (hereinafter referred to as “**the Corporate Debtor**”).

2. The Corporate Debtor was incorporated on 21.09.1999 under Companies Act, 1956. Its registered office is situated at 9, Grain Merchant Co-op, Society Limited, Sector-17, Vashi, Navi-Mumbai-400703. Hence, this Tribunal has the jurisdiction to entertain the present Company Petition.

**Brief facts:**

3. The Operational Creditor is an advertising agency, provides various advertising services such as outdoor media, print media, TV, digital, social media and radio. The Corporate Debtor had availed the service of Advertising, Designing and Artwork from the Operational Creditor through telephonic and e-mail correspondence as well as through personal meetings.
4. The Operational Creditor raised 127 invoices between the period of 27.03.2014 to 22.09.2016 amounting to Rs.28,11,672 (Rupees Twenty-

Eight Lakh Eleven Thousand Six Hundred and Seventy- Two Only).

The invoices are placed on record at Annexure C.

5. It is submitted that Corporate Debtor had made the last payment on 21.12.2016 for a sum of Rs. 30,000/- (Rupees Thirty Thousand Only).
6. The Petitioner submits that several requests were made to the Corporate Debtor to clear the outstanding amount. However, the Corporate Debtor failed to pay the balance outstanding amount. The Operational Creditor decided to initiate the process under the Insolvency and Bankruptcy Code, 2016.
7. The Operational Creditor had initially served a Demand Notice on the Corporate Debtor vide speed post on 28.02.2018 and same was delivered to the Corporate Debtor on 06.03.2018.
8. The Corporate Debtor has replied to the Demand Notice dated 28.02.2018 vide letter dated 15.03.2018. In the above mentioned letter, the Corporate Debtor denied the entire claim raised by the Operational Creditor.
9. The Operational Creditor submits that it is evident from the extract of Form 26AS, that the Corporate Debtor had deducted TDS on the above Invoices i.e. there is a genuine liability which was the raised by the Operational Creditor under the demand notice dated 28.02.2018 and

also accepted and booked by the Corporate Debtor and TDS deducted thereon.

10. The Operational Creditor was not able to file a Section 9 Petition basis the issuance of first demand notice dated 28.02.2018. Therefore, the Petitioner issued a second demand notice dated 27.12.2018 demanding outstanding amount of Rs. 28,11,672/- (Rupees Twenty-Eight Lakhs Eleven Thousand Six Hundred Seventy-Two Only) along with Interest now amounting to Rs.55,82,547/- (Rupees Fifty-Five Lakhs Eighty-Two Thousand Five Hundred Forty-Seven Only) totaling to Rs. 83,94,219/- (Rupees Eighty-Three Lakhs Ninety-Four Thousand Two Hundred Nineteen Only). The computation of claim is annexed to Petition as "Annexure F".
11. The Corporate Debtor has replied to the second demand notice vide letter dated 04.01.2019 wherein the Corporate Debtor has denied its liability and disputed the debt.
12. The date of default stated to be in Part-IV of the Petition is 11.05.2014. The date of filing of the Petition is 20.12.2019. The Petitioner for the purpose of Limitation submits that the Corporate Debtor has made part payment of Rs.30,000/- on 21.12.2016, thereby extending the Limitation period.

13. The Petitioner has placed on record ledger of the Corporate Debtor in the books of the Petitioner from 01.03.2013 to 27.12.2018.
14. The Corporate Debtor submits that there are no outstanding dues payable by the Corporate Debtor. The Corporate Debtor has taken us through letter dated 07.01.2017 wherein the amount demanded by the Operational Creditor was strongly refuted and he has also sought proof of the work done by the Operational Creditor. Further, the Corporate Debtor terminated the business relationship with the Operational Creditor.
15. It is submitted that the legal notice dated 01.02.2017 sent by the Operational Creditor was disputed by the Corporate Debtor vide notice dated 17.02.2017. Thereafter, the Corporate Debtor has placed on record extensive communication between both sides.
16. Lastly, the Corporate Debtor submits that the Operational Creditor has not been able to establish that the demand raised is genuine. In addition of this, the Corporate Debtor has submitted letter dated 26.12.2019 issued by Punjab National Bank wherein it is reflected that Rs.33,63,918/- has been transferred in the account of M/s Shawn Advertising by RTGS.
17. Further, vide its additional affidavit dated 14.07.2022 the Corporate Debtor has submitted that invoices issued are on basis of forged and

fabricated documents. Further, it argued that the photographs attached to the invoices are similar to one another and the Operational Creditor has tried issue multiple invoices basis the same hoarding.

**Findings**

18. We have heard the submissions of both sides and perused the records.
19. It is clearly discernible from the Petition, that there is debt owed to the Petitioner as the invoices forming part of the Petition are not disputed by the Corporate Debtor. Vide its additional affidavit dated 14.07.2022 the Corporate Debtor has disputed six invoices having numbers, 172, 290, 703, 761, 823 and 985. The Operational Creditor, vide affidavit dated 17.07.2023 has categorically affirmed that these invoices were accounted by the Corporate Debtor, tax was deducted thereon, and subsequently paid. Further, it has also been stated these invoices do not form part of the Petition. However, we find that the Corporate Debtor has submitted that the Petitioner had raised few of the invoices twice on the basis of forged pictures of display. It is placed on record that Invoice no. 172 dated 2.2.13, Invoice No. 703 dated 8.4.2023, and Invoice No. 823 dated 12.6.2013 was for the same job as was billed again vide Invoice no. 290 dated 1.3.2013, Invoice No. 761 dated 12.5.2013, Invoice No. 985 dated 15.10.2013. The Corporate Debtor has placed on record the comparison of photographs forming basis of

both the invoices, which confirm the allegation. not based the claim on the basis of the said invoices, hence this defence cannot be considered.

The Applicant has admitted the fact that all of these six invoices were duly paid by the Corporate Debtor, which implies that only three invoices were payable and the remaining three were not payable by the Corporate Debtor.

20. Though, this raises the issue of reconciliation of the total amount of debt due and payable by identifying which of the invoice remains unpaid, considering the fact that the Applicant has also not brought on record invoice wise unpaid dues and has determined unpaid invoices only upon FIFO basis (assuming that first invoice was paid first, because the Corporate Debtor made lump sum payment, and not invoice wise payments), however, even if the amount of disputed invoices, which are three as other three were admittedly payable, the amount of admitted debt remaining due and in defaults exceeds Rs. 1,00,000/-. The Corporate Debtor has not disputed the quality of service provided qua other invoices attached to Petition and has accordingly defaulted in payment of a debt exceeding Rs. 1,00,000/-, the minimum threshold limit prescribed u/s 4 of the Code at the time of filing of present application. Hence, the Petition is maintainable.

21. Further, the Petitioner has submitted that part payment amounting to Rs.43,39,983/- was received from the Corporate Debtor between 09.04.2014 to 21.12.2016, this tantamounts to acknowledgement of debt. The amount is corroborated from the ledger account placed on record.
22. The Petition bearing CP (IB) 4659 MB/C-I/2019 filed by **Shawn Advertising** the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) **against Nikita Jewelers Private Limited**, the Corporate Debtor, is admitted.
23. There shall be a moratorium under section 14 of the IBC, in regard to the following:
  - i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including

- any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
24. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
25. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
26. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
27. Mr. Pravin R Navandar, having registered number IBBI/IPA-001/IP-P00008/2016-2017/10027 Email Id: pravin@prnco.in, registered

mobile no-9820950019 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

28. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
29. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
30. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email

immediately, and in any case, not later than two days from the date of this Order.

31. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
32. Ordered accordingly.

**Sd/-**

**PRABHAT KUMAR**  
**Member (Technical)**

05.12.2023

**Sd/-**

**JUSTICE V.G. BISHT**  
**Member (Judicial)**